

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5778 of 1995

to

FIRST APPEAL No 5797 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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BAI KANKU W/DO DUNGARJI                      UGARESHWAR

Versus

THE SPECIAL LAND AQUISITION      OFFICER NO. 2  
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Appearance:

MR AJ PATEL for Petitioner

MR AD OZA, GOVERNMENT PLEADER for Respondent No. 1  
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CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE C.K.BUCH

Date of decision: 28/03/2000

ORAL JUDGEMENT( PER : M.H.KADRI,J )

The appellants- original claimants, by filing these First Appeals under Sec.54 of the Land Acquisition Act, 1894 ( to be referred to as the "Act" for short), read with Sec.96 of the Code of Civil Procedure, have challenged the common judgment and award dated 18th March, 1994 passed by the learned 2nd Jt. District Judge, Mehsana in a group of Land Reference Cases Nos. 437/87 to 456/87. As common questions of facts and law are involved in these First Appeals, we propose to dispose of them by this common judgment.

2. The Executive Engineer, District Panchayat, Vibhagh- 1-2, Mehsana, proposed for acquisition of lands of the claimants of village Ruppur, Ta : Chanasma, District : Mehsana for the purpose of preparing Chanasma-Sendha-Sevla Road. The said proposal was scrutinised by the State Government and notification under Sec.4(1) of the Act was published in the Government Gazette on 6th October, 1983. After following the usual procedure under the Act, declaration under Sec.6 of the Act was made on 30th August, 1984. Thereafter, notices under Sec.9(3)(4) of the Act was served on the claimants. Claimants, in response to the notices, claimed compensation of the acquired lands before the Land Acq. Officer at the rate of Rs. 50/ per sq.mt. Land Acq.Officer, on the basis of the material placed before him, made his award on 16th September,1986 and offered compensation of the acquired lands at the rate of Rs.0.52ps. per sq.mt. Claimants were of the opinion that the compensation offered by the Land Acq.Officer was inadequate and, therefore, they filed applications under Sec.18 of the Act requiring the Land Acq.Officer to refer their applications to the District Court, Mehsana for determination of the market value of the acquired lands. Accordingly, said applications were referred by the Land Acq. Officer to the District Court, Mehsana which came to be numbered as Land Reference Case Nos. 437/87 to 456/87. All the reference cases were consolidated. Parties led common evidence in Land Reference Case No. 454/87. Claimants, in support of their claim of Rs. 50/ per sq.mt., examined Chhelgiri Ishwargiri Gosai- claimant of Land Reference Case No. 452/87 at exh.37. The witness has deposed that village Ruppur and Chanasma are situated adjacent to each other. The witness, during the deposition, produced 7/12 extracts of the acquired lands. He deposed that Chanasma town was fast developing and petrol pump and other industries including residential societies were established on the lands of village Ruppur. The witness also deposed that educational

institutions were also established in village Ruppur and the price of the lands of village Ruppur at the relevant time, was Rs. 16,000/ to Rs. 20,000/ per vigha. The witness claimed that Mehsana-Harij Road was passing near the acquired lands. The witness further claimed that agriculturists used to raise three crops in a year on the acquired lands with the help of tube-well and the agriculturists used to raise crops of Jeera, Variyali and Erranda etc. and were earning net income of Rs.20,000/ per vigha from the acquired lands. The witness was cross-examined by the counsel for the State Government and the Acquiring Body, but his evidence was not dislodged during the cross-examination. The witness, during his deposition, produced previous award at exh.44 rendered in Land Reference Case No. 72/85 and allied matters, wherein the Reference Court, vide judgment and award dated 14th December, 1992, had determined the market value of the acquired lands of town Chanasma as on 20th May, 1983, at the rate of Rs. 10/ per sq.mt. Reference Court discarded the previous award exh.44 on the ground that acquired lands of previous award were situated in the town Chanasma which was a developed area, whereas the present acquired lands are situated in the village Ruppur which was not a developed area. Reference Court, in the ultimate analysis, awarded an additional compensation of Rs. 0.18 ps. per sq.mt. i.e. Rs.0.52 ps. awarded by the Land Acq. Officer + Rs.0.18 ps. awarded by the Reference Court, totalling to Rs.0.70 ps. per sq.mt. which has given rise to filing of these appeals by the original claimants.

3. Learned counsel for the appellants-claimants has taken us through entire record & proceedings produced before the Reference Court and submitted that there was enough evidence produced by the claimants to justify their claim of Rs. 50/ per sq.mt. for the compensation of the acquired lands. Learned counsel for the appellants-claimants further submitted that town Chanasma was fast developing and it had almost merged with village Ruppur wherein the present acquired lands were situated. Learned counsel for the appellants further submitted that the acquired lands of village Ruppur were in all respects, comparable with the acquired lands of previous award exh.44 and the Reference Court erred in not relying on the previous award exh.44 which had become final because the said award was not challenged in higher forum and the Acquiring Body and Land Acq.Officer had already made payments to the claimants.

4. Learned Government Pleader Mr. A.D.Oza has submitted that just and reasonable compensation was

offered by the Reference Court and the claimants had not led sufficient evidence to justify their claim of Rs.50/ per sq.mt. Learned counsel for the government submitted that previous award exh.44 was not at all comparable and relevant for the purpose of determination of the market value of the acquired lands and, therefore, these appeals should be dismissed.

5. Claimants' witness Chhelgiri Ishwargiri Gosai had given description of the acquired lands. He had also produced 7/12 extracts of the acquired lands which show that the agriculturists used to raise three crops in a year on the acquired lands with the help of irrigation facilities through tube-well. The evidence of this witness was not challenged in the cross-examination. From the evidence of this witness, it becomes evident that the present acquired lands were fertile lands and claimants used to raise three crops in a year and were getting net income of Rs. 20,000/ per year from the sale of the agricultural produce. It requires to be mentioned that adjoining lands of the town Chanasma were acquired by issuance of notification under Sec.4(1) of the Act on 20th May, 1983 for the public purpose of constructing residential houses for the employees who are working for the construction of Narmada Canal. Reference Court, after taking into consideration the evidence produced by the claimants and the Acquiring Body, had determined the market value of the acquired lands of town Chanasma at the rate of Rs. 10/ per sq.mt. Said award exh.44 was not challenged in the higher forum and, therefore, it had become final. The claimants of the present acquired lands had led sufficient evidence with regard to the fertility and situation of the acquired lands of previous award exh.44 as well as of present acquired lands. We are of the opinion that looking to the situation and fertility of the present acquired lands, previous award exh.44 was in all respects, relevant and comparable for determining the market value of the present acquired lands. In our opinion, Reference Court had erred in not placing reliance on the previous award exh.44 which related to the acquired lands of town Chanasma wherein for acquisition as on 20th May 1983, Reference Court had determined the market value at the rate of Rs.10/ per sq.mt. The acquired lands in question were acquired by issuance of notification under Sec.4(1) of the Act on 6th October, 1983 which is, in our opinion, very near in proximity of time. It is settled legal position that one of the method for determination of the market value of the acquired lands is the previous award of the Reference Court or the High Court ( AIR 1993 SC 225 ). The award exh.44, as stated earlier, was relevant and comparable

for the determination of the market value of the present acquired lands. Taking into consideration the fact that the acquired lands of previous award exh.44 were situated in Chanasma town whereas the present acquired lands are situated in village Ruppur, we determine the market value of the present acquired lands at the rate of Rs. 7.50 per sq.mt. minus Rs.0.70 ps. per sq.mt. awarded by the Reference Court.

6. As a result of foregoing discussion, these appeals are partly allowed. Market value of the acquired lands of village Ruppur as on 6th October,1983 is determined at Rs. 7.50 per sq.mt. Hence, the claimants will be entitled to the additional amount of Rs.6.80 per sq.mt. with all the statutory benefits under Sec.23(1A), 23(2) and interest under Sec.28 of the Act. However, it is made clear that the claimants shall not be entitled to the interest on the amount of solatium as well as on the amount under Sec.23(1A) of the Act. Office is directed to draw the decree in terms of this judgment.

7. Learned counsel for the appellants-claimants has made a grievance that the appellants have lost their source of income because of compulsory acquisition of the acquired lands in the year 1983 and they have not been paid just compensation. Learned counsel for the appellants, therefore, submitted that respondent be directed to deposit additional amount of compensation within reasonable time. We, therefore, direct that respondent shall deposit additional amount of compensation awarded by this judgment within 4 (four) months from the date of receipt of certified copy of the judgment and decree. Office is directed to draw the decree as per this judgment as early as possible.

8. These appeals stand allowed partly to the extent indicated above. No order as to costs.

28.3.2000 [ M.H. KADRI, J ]

[ C.K. BUCH, J ]

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